

**UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001**

**Notice of Price Adjustment and  
Classification Changes Related to  
Move Update Assessments**

**Docket No. R2010-1**

**COMMENTS OF THE  
ASSOCIATION FOR POSTAL COMMERCE,  
DIRECT MARKETING ASSOCIATION, INC.  
AND ALLIANCE OF NONPROFIT MAILERS**

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In response to Order No. 318, the Association for Postal Commerce (“PostCom”), Direct Marketing Association (“DMA”) and Alliance of Nonprofit Mailers (“ANM”) respectfully submit these comments on the *United States Postal Service Notice of Market Dominant Price Adjustment and Classification Changes* related to Move Update assessments (“Notice”) filed with this Commission on October 15, 2009.

**I. INTRODUCTION AND SUMMARY**

In the Postal Service’s latest Notice of Price Adjustment, the Postal Service again revises its plans to impose “assessments” (i.e., penalties or surcharges) of seven cents per piece on mailings that purportedly fail MERLIN/PBV tests of sample addresses when the mail is first accepted. The Postal Service now proposes to apply the seven-cent penalties to both First-Class and Standard Mail, although the penalties would apply only to the purported failure rate that exceeds a Postal Service-defined tolerance level. The initial tolerance level is 30%, but the Postal Service “intends to reduce this tolerance as necessary to ensure that address quality improves....”

Although the Postal Service’s current plan is less radically unfair in some respects than the abortive penalty scheme proposed by the Postal Service in Docket No. R2009-2, the revised proposal is still a non-starter. Since the Postal Service first announced a Move Update penalty in early 2009, mailers have expressed widespread confusion about the specifics of the Move Update requirements, and deep concern about unclear and undefined aspects of the Move Update verification process and the severity of the proposed penalties. Nothing in the current submission is even remotely responsive to the issues mailers have informally raised. The one significant concession offered in the latest iteration of the penalty proposal—limiting the penalty to the portion of the failure rate that exceeds a tolerance threshold determined by the Postal Service—does nothing to remedy the fundamental defects of the proposal. While a penalty scheme with a tolerance threshold is obviously better than a penalty scheme without a tolerance threshold, the threshold is illusory and the result suffers from fatal operational and legal shortcomings.<sup>1</sup>

The revised Move Update penalty scheme proposed here is unsupported by: (1) legally adequate notice to mailers or the Commission about either both the Move Update requirements or the verification process that will be used to assess penalties; (2) credible evidence demonstrating that the net revenue effect of the assessment would comply with the CPI cap; (3) any showing that the amount of the penalty bears a rational relationship to the costs of the “failed” mailpieces to the Postal Service; or (4) any attempt to reconcile the Commission’s statutory oversight of Postal Service rate and classification changes with the Postal Service’s proposal to reserve for itself the right to make unilateral

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<sup>1</sup> Because of these shortcomings, we cannot even gauge the overall price effects of the Postal Service’s changes to the penalty.

changes to the tolerance threshold and other major terms and conditions of the penalty scheme in the future. The Commission cannot lawfully approve this scheme. To do so would implement rates and classification rules that fail to meet the requirements of the PAEA and administrative due process.

PostCom, DMA and ANM emphasize that they do not oppose the implementation of a system of Move Update verification at acceptance. But, the Postal Service's "ready, shoot, aim" approach is unacceptable on legal, policy and operational grounds.

## **II. THE PROPOSED PENALTY STANDARDS AND VERIFICATION PROCEDURES ARE AMBIGUOUS TO THE POINT OF INCOHERENCE.**

Despite months of requests for clarification by mailers, the Postal Service has failed to disclose many of the most critical rules and definitions that will determine whether a given address will pass or fail. The "rules" that have been published, have not been promulgated through normal administrative notice and comment procedures; rather they appear in assorted technical documents, and are rife with ambiguities. The 30 percent tolerance limit, while purportedly generous, is actually unforgiving because of the way the ratio is defined. The ratio does not measure the failure rate of the entire mailing, but the failure rate of the *subset* of addresses reported by the Postal Service MERLIN/PBV database as having been updated. Inconsistencies between the MERLIN/PBV database and the Move Update databases that the Postal Service requires mailers to use, along with a welter of unresolved problems with the MERLIN/PBV standards, mean that the verification process is likely to generate an unknown but potentially very high rate of false "failures," potentially exceeding any Postal Service-defined tolerance. Moreover, mailers cannot avoid a penalty assessed through

MERLIN/PBV even by faithful compliance with several Move Update methods that the Postal Service has approved or recognized.

Each of these circumstances are further described below.

**A. The Pass Fail Standards Are Ambiguous and Arbitrary.**

The most immediate problem with the proposed penalties is that the Postal Service still has not disclosed to mailers what they must do to avoid the penalties. The October 15 notice is almost entirely uninformative. The proposed Mail Classification Language provided in Appendix A to the notice is essentially a placeholder for information that will be provided elsewhere, if at all. *See* Appendix A, proposed MCS § 1105.5 (“Add \$0.07 per assessed piece, *as specified by the Postal Service.*”) (emphasis added); *id.*, § 1110.5 (same); *id.*, § 1115.5 (same); *id.*, § 1120.5 (same);

The Federal Register notice published by the Postal Service last week to accompany this case is scarcely more revealing. The notice announces changes in the Domestic Mail Manual (“DMM”), “discusses tolerances for determining when the number of change-of-address inaccuracies in a mailing requires additional postage assessments at the time of acceptance, and also discusses how the error rate and additional postage assessment will be calculated for First-Class Mail and Standard Mail items at the time of assessment.” 74 Fed. Reg. 55140 (October 27, 2009). The revised DMM language states only that:

Pieces subject to an additional postage assessment at the time of mailing for change of address errors are subject to additional postage of \$0.07 per assessed piece according to procedures published in the Move Update Mailer Advisement Policy, available at [ribbs.usps.gov](http://ribbs.usps.gov).

74 Fed. Reg. at 55141-42 (to be codified at DMM §§ 200.3.5.4, 240.3.9.4, 300.3.5.4, 340.3.9.4, 400.3.5.4 and 440.3.9.4) (emphasis added). Like the proposed MCS language set forth in Appendix A to the Postal Service's October 15 notice in this docket, the Federal Register notice discloses nothing about regarding the verification rules that will determine whether a given address passes or fails.

The Postal Service has asserted that Publication 363 and the Move Update Mailer Advisement Policy posted at <http://ribbs.usps.gov/index.cfm?page=moveupdate> answer these and other substantive questions about the Move Update penalties. Publication 363, however, provides little if any guidance about what mailers must do to avoid the new Move Update penalties, and the question-and-answer format serves primarily to obscure. It is difficult to image how even the most sophisticated mailers will be able to comply with complex technical rules presented in such a disorganized and unclear manner. And the Move Update Mailer Advisement Policy is a three-page document that does little more than the summarize the basic mechanics of the MERLIN/PBV penalty formula.

Two examples illustrate the sphinx-like character of the proposed rules. The first involves the available options for matching logic. The Postal Service has informally but publicly indicated that the Move Update component of PBV will use Standard Matching logic to test all mailings. Mailers that use NCOALink to meet the Move Update requirements, however, are now allowed to choose which matching logic to use. The "Individual" option, for example, implements address changes only for the individuals who submit change of address notices, and does not assume that other family members are participating in the move-related address change. This is an important distinction because Federal and state laws designed to protect consumer privacy, minimize the risk

of identity theft, and ensure that consumers receive actual notice of certain legal notices expose many business mailers to substantial legal liability for forwarding based on an erroneous assumption that other household members will continue to reside with the individual who filed the change-of-address notice. These legal restraints effectively bar these mailers from using Family matching logic.

Under the proposed rules, however, if a mailer chooses to accept only Individual matches, and a particular address has a Family move on file for it, that address will be flagged during the Move Update verification process as an address for which a change-of-address should have been applied. The Postal Service itself informally admits that the negative effect on the PBV scores of mailers who use Individual or Business matching logic is significant. This rule effectively imposes a lower tolerance rate on these mailers because a proportion of their address deficiencies will result from Family matches, and not from failure to update the addresses for which the mailers have received change-of-address matches.

In Publication 363, Question 48, the Postal Service has suggested that mailers who choose to reject Family move matches are not entitled to discounted postage rates for those mailpieces bearing addresses that have a Family move on file:

A mailer's choice to disregard certain address updates provided through Move Update products does not entitle the mailer to continue to claim postage discounts where the update of the address is a prerequisite to getting the discount. Within the Move Update verification of the address, addresses that have not been updated due to a mailer business practice will be identified, and the mailer will be required to document why these addresses have not been updated.

These two sentences are inconsistent, further underscoring the lack of clearly defined Move Update verification standards. It is unreasonable to allow mailers to select

among a number of options for accepting NCOA<sup>Link</sup> change-of-address matches, but consider only one of those options as Move Update compliant. Moreover (assuming that the second sentence is operative), the Postal Service has not clarified what type of documentation a mailer would need to provide to show why these addresses have not been updated. It is not even clear whether a mailer's decision to reject Family move matches based on privacy or other legal constraints would be an acceptable explanation of why the addresses have not been updated.

A second major ambiguity involves the FASTforward compliance method. For example, Publication 363 states (at p. 5) that “Mailers using *FASTforward* have the *option* of using FASTforward Move Update Notification (FFMUN) to receive electronic files of COAs matched during the MLOCR run.” ([http://ribbs.usps.gov/move\\_update/documents/tech\\_guides/PUB363.pdf](http://ribbs.usps.gov/move_update/documents/tech_guides/PUB363.pdf)) (emphasis added). This language suggests that a customer that opts to use FASTForward to comply with Move Update has no obligation to receive and process the FFMUN file, or to contract with the customer's service provider to do the same. But the “Introduction to FASTForward Move Update Notification” introduces uncertainty on this point: it states (at p. 3) that “[i]t is the responsibility of the customer to create the necessary applications to process the FFMUN file.” Postal Service headquarters has informally stated that address correction with traditional FASTforward service fully satisfies Move Update requirements. Mailers report, however, that field personnel say traditional FASTforward is not enough; rather that mailers are required to develop a process for using the FFMUN file.

**B. The 30% Tolerance Limit Is Intolerant.**

The MERLIN/PBV process calculates the error rate in a sample of mailpieces by dividing the number of pieces within the sample for which a change of address (“COA”) match was identified, but which were not updated, by the number of pieces within the sample for which a COA match was identified in the MERLIN/PBV database. See 74 Fed. Reg. at 55140 (third column) to 55141 (first column). This definition of the error rate bears no relationship to the percentage of undeliverable as addressed mail (“UAA”) in the mailing as a whole. Assume, for example, a mailing consisting of 100,000 pieces, from which a sample of 1,000 pieces is drawn for the MERLIN/PBV test. Of the 1,000 sampled pieces, assume that 12 have addresses identified in the MERLIN/PBV database as changed, and six of those changes having been implemented in the sampled addresses. Six unimplemented address changes out of 1,000 addresses is an error rate of 6/10 of one percent—a low error rate, and one clearly below current Move Update thresholds. Under the proposed “tolerance” limit, however, the mailing would have a “failure” rate of 50 percent ( $6 \div 12$ ), a failure rate that would exceed the 30 percent tolerance threshold by 20 percentage points. The resulting penalty would be seven cents \* 20% \* 100,000, or \$1,400. See USPS Move Update Mailer Advisement Policy (Aug. 2009) at 2 (explaining formula for calculating penalty).<sup>2</sup>

Thus, the definition of the 30% tolerance limit means that address lists in which less than 1% of the addresses are incorrect, nonetheless may have “failure” rates of greater than 30%. PostCom, DMA and ANM members have informed us that the

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<sup>2</sup> By contrast, if the seven cent penalty were applied to the estimated failure rate of the entire mailing as drawn from the sample— $0.006 * 100,000 = 600$  pieces—the total penalty would be \$42. And no penalty at all would be due if all 100,000 addresses were investigated after the fact under the currently accepted Move Update standards, since an error rate of 6/10 of one percent is below the tolerance for each standard.

MERLIN/PBV methodology is regularly reporting “failure” rates greater than 30% despite the mailers’ diligent and good-faith efforts to comply with Move Update requirements.

**C. The Verification Process Is Likely To Generate An Unknown But Potentially Very Large Volume Of False “Errors.”**

What little information the Postal Service has disclosed about its MERLIN-based verification process makes clear that it is likely to generate an unknown but potentially very large volume of false “errors,” because it will report many Move-Update compliant addresses as noncompliant. The reasons for this are manifold. We address several categories of such reasons below.

**Treatment of Moved Left No Address (“MLNA”) and Closed PO Box (“BCNA”) Matches.** The Postal Service has informally advised the undersigned parties’ members that under the new PBV procedures, MLNA and BCNA matches will be considered deficient. The Postal Service has also indicated that it will require mailers to suppress addresses which have produced MLNA or BCNA matches within 95 days of the effective date of the change-of-address file order. These rules signify a change in the treatment of these categories of change-of-address orders. The Postal Service has traditionally accepted re-mailings to these addresses at the discounted rate as long as mailers have met the standard set forth in the DMM and are working in good faith to resolve these records.

Because a MLNA or BCNA match does not include an address, very often mailers simply cannot actually update the address within 95 days. In some cases, the mailer may have obtained a valid current address from a source other than the Postal

Service. The Postal Service's apparent decision that these addresses must be suppressed is unexplained and inexplicable. Additionally, suppression of such addresses conflicts with other government regulations that require continued mailing (First-Class and Standard Mail) beyond the 95-day timeframe.

**Co-mailing and Co-mingling.** Under the proposed rule for Combined Multi-Client Mailings, set forth in the August 2009 Move Update Mailer Advisement Policy, if more than three clients in a combined mailing are found with Move Update errors that cause the mailing to fail verification, the *entire* mailing will be subject to an additional postage calculation. A narrow exception is carved out of the rule: for one year, where three or fewer clients are detected with Move Update errors, the additional postage may be attributed to the individual clients. This exception applies for one year from the date Move Update verification is implemented.

Notwithstanding the limited exception, this rule will unduly burden mail service providers that offer co-mailing services. Mail service providers would have to raise their prices to cover the additional postage themselves and risk losing their largest and most responsible clients. Such price increases will undoubtedly result in a decrease in the volume of discretionary mail, which is presumably not what the Move Update rules are about.

**Limitations of Databases.** Mailers report known limitations of the Move Update databases with respect to college, university and military addresses, and addresses in Puerto Rico and U.S. territories. Thus, mailings including these categories of mail recipients will be disproportionately penalized. Mailers suggest this penalty risk is likely

to reduce the expected value of some demographic or geographic mailing campaigns, and therefore adversely affect mail volumes.

**Limitations of MERLIN PBV Address Matching Technology.** Mailers with mailings that have been subjected to Performance Based Verification testing report inconsistent results from consecutive mailings to the same address; these errors were not attributable to an intervening move. Mailers also report test experience suggesting that the Postal Service's MERLIN-based Performance Based Verification deals poorly with certain moves where family members have closely related names, such as William Smith and his son, William Smith, Jr. When a move of a person or family with a common name is reported, will mail addressed to persons with closely related names – whether or not those persons are members of the same household as (or even related to) the person or family that submitted the change-of-address order – be treated as non-compliant?

**Failure Of MERLIN/PBV Algorithms To Recognize Existing Move Update Exceptions.** The MERLIN/PBV matching technology also appears not to recognize a number of exceptions in the existing Move Update requirements. For example, the Move Update technical documentation does not deal with an address that was newly acquired by the mail owner as a result of a business transaction or customer request for information. Under the existing Move Update rules, the mail owner may use the newly acquired address in mailings for up to 95 days before the address must be updated:

When a customer request[s] goods, services, or information and is added to a list as a result, this directly acquired address does not require immediate Move Update processing and may be mailed to for the first 95 days. Afterwards, the address must be Move Update processed along with the rest of the addresses in the list. Direct contact is defined as an explicit instruction received directly from the customer to have something mailed to them using an address provided by the customer for that mailing purpose. The mailer may continue to use the customer-provided address

for a maximum of 95 days and be in compliance with the Move Update Standard. After 95 days the mailer will be required to resubmit the address along with their other addresses to an approved Move Update process, and use the results of that process, to remain compliant with Move Update.

USPS, *Updating Address Lists Is A Smart Move* (January 2009) at 2 (downloaded from <http://ribbs.usps.gov/index.cfm?page=moveupdate> on November 3, 2009) MERLIN, however, has no way of knowing the source of an address, or the date it was acquired, and the PBV test will therefore report such an address, if recently changed, as a violation of the Move Update rules.

Similarly, the formula for determining the error rate (described above) means that address lists which satisfy the “99% Alternative” method of complying with Move Update may nonetheless have “failure” rates greater than 30%. The Postal Service is proposing to assess a penalty at acceptance for relying on a method of Move Update compliance that the Postal Service has authorized for many years, but now apparently intends to repeal without any explanation or rationale—or even a public announcement that approval of the method has been rescinded.

**Database Inconsistencies.** The Postal Service has several methods of Move Update compliance, including NCOA<sup>Link</sup>, ACS (traditional and IMb), and FASTForward. Inconsistencies between the different databases supporting these compliance methods – in terms of both address information (content) and format – will cause subscribers to different Move Update methods to be scored with bad addresses although the mailer has implemented appropriate Move Update processes. This problem is particularly acute for mailers who use more than one method.

**Sampling and Statistical Errors.** The MERLIN/PBV process analyzes very small samples of a mailing to verify Move Update compliance. Individual move update “errors”—and the types of pseudo-errors attributable to the verification process described above—in these undersized samples have the potential to over-inflate the calculated error rate for the entire mailing, resulting in either an outsized or entirely improper assessment.

Further, because of the asymmetric nature of the scoring, samples with below-average move update “error” rates do not offset samples with above-average “error” rates. The margin by which the reported tolerance ratio of one sample falls below the 30% threshold does not get credited against the margin by which the reported tolerance ratio of another sample exceeds the 30% threshold because only one sample is drawn of any mailing selected for testing and assessment.

During earlier stages of the MERLIN/PBV development process, the Postal Service, acknowledging some of the above problems, represented that mailers could rebut bad MERLIN/PBV test results by showing that allegedly non-compliant addresses had been processed properly through a recognized Move Update method. This safe harbor seems to have disappeared from the rules now proposed. The Move Update Advisement Policy states that:

mailpieces with addresses for which a change of address (COA) order is found are identified with a MERLIN mailpiece ID. The ID enables the acceptance clerk to pull the subject mailpieces from the sample and provide copies of the mailpieces to the mailer. In addition to copies of the subject mailpieces, Move Update reports are provided to a mailer whose mailing is processed on MERLIN.<sup>3</sup>

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<sup>3</sup> See Move Update Mailer Advisement Policy, available at <http://ribbs.usps.gov/index.cfm?page=moveupdate> (August, 2009).

The implication of this change is that the penalty will be assessed automatically, based on a presumption of non-compliance that will be essentially un rebuttable. Reworking a large commercial mailing once prepared and presented for acceptance is rarely practical. Assuming the mail has been accepted, the only way to overturn the penalty will be to demonstrate compliance with Move Update on appeal to the Postal Service's Pricing and Classification Service Center. *See* DMM 607. But the best available evidence of compliance—the actual addresses on the actual mailpieces—is dispersed into the postal system once the Postal Service has accepted the mailing. The Postal Service has not announced any plans for recording and preserving this evidence—let alone explained how mailers will ever be able to rebut the presumption of noncompliance arising from an unfavorable MERLIN/PBV test result.

**Inadequate Substantiation.** The Postal Service has submitted what purports to be a summary of the results of all Move Update “tests” at acceptance units from April through August of this year. The Postal Service states that the tests were performed as part of the regular acceptance process at those Bulk Mail Entry Units (BMEUs) equipped with Mail Evaluation Readability Lookup Instruments (MERLINS). The number of pieces in the test samples averaged about 900 pieces per test in First-Class Mail Presort and about 800 pieces per test in Standard Mail. The Postal Service provides these results summarized across mailings. The reported failure rates are relatively low. The Postal Service claims that these results very closely represent the sites, mailers, and mailings that will be tested when actual assessment begins. Appendix B1 Preface.

But the Postal Service has failed to disclose its sampling rules and methodology. We do not know the volumes in the mailings tested, or whether the sample size was

statistically significant. For example, the Postal Service does not provide a summary results grouped by the size of the mailing or the size of the sample, so there is no way to know if the results disproportionately penalize larger or smaller mailings, or mailings where a smaller sample is tested.

Nor has the Postal Service disclosed relevant information regarding the process of producing its test report. For example, we are not informed whether or not any results sampled (such as false positives that were subsequently acknowledged by the Postal Service during testing) have been excluded from the reported results, or whether the standards and procedures used to perform the tests and grade the tested addresses match the rules that the Postal Service now intends to implement.

### **III. THE PROPOSED RATE AND CLASSIFICATION CHANGES ARE UNLAWFUL.**

The proposed MERLIN/PBV penalty must be rejected because the Postal Service has (1) failed to provide a legally sufficient notice of the terms and conditions under which the penalty will be applied; (2) failed to disclose sufficient data to determine the size of the price increase and whether or not it complies with the CPI-based price cap; (3) failed to establish a rational relationship between the 7-cent penalty and the harm to the Postal Service caused by mailpieces that fail the MERLIN/PBV test; and (iv) reserved the right to make unilateral changes to many of the rules governing this classification, thereby usurping the Commission's oversight over postal rates and classifications. Each of these grounds independently justifies rejection of the proposal.

**A. The Proposed Penalty Must Be Rejected Because the Postal Service Has Failed to Provide Legally Sufficient Notice of the Terms And Conditions Under Which the Penalty Will Be Applied.**

The Commission should reject the penalties proposed by the Postal Service because the Postal Service has failed to supply legally sufficient notice of terms and conditions under which the penalty will be applied. This omission violates the Commission's notice requirements for proposed rate and classification changes (which are corollaries of basic tariff filing requirements for common carriers and public utilities), as well as fundamental norms of due process and administrative law prohibiting punishment in the absence of clearly prohibited conduct.

The Commission's rules require the Postal Service to "[p]rovide notice in a manner reasonably designed to inform the mailing community and the general public that it intends to change rates not later than 45 days prior to the implementation date." 39 C.F.R. § 3010.10(a). This requirement cannot be satisfied unless the "notice" provided is clear enough to inform rate payers of what conduct will incur the penalties, and what conduct will avoid them. It is an established principal of common carrier and public utility law that a tariff will not be accepted if its terms are ambiguous in any material respect. *See, e.g., Northern Natural Gas Co.*, 102 FERC ¶ 61,171 at 61,457 (2003) ("Contract provisions must be fully transparent and implemented in a non-discriminatory manner."). Simply put, a rate payer must be able to discern from the face of the tariff what rates he will be charged for specific services, and what conduct will not lead to a charge.

Moreover, because the Postal Service and the Commission are establishments of the federal government, the obligation to disclose fully the circumstances in which

mailers will be liable for Move Update has a constitutional dimension. As the D.C. Circuit explained in *General Electric Co. v. EPA*, “[t]he due process clause . . . prevents . . . deference [to administrative agencies] from validating the application of a regulation that fails to give fair warning of the conduct it prohibits or requires.” 53 F.3d 1324, 1328 (D.C. Cir. 1995) (internal quotations omitted). “In the absence of notice—for example, where the regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing civil or criminal liability.” *Id.* at 1328-29. The Postal Service, an establishment of the federal government pursuant to 39 U.S.C. § 201, is bound by this constitutional principle of administrative due process. It cannot impose penalties without providing mailers with sufficient notice of the conduct it intends to prohibit and the methods mailers can use to avoid the penalties.

The Postal Service’s notice of rate change does not even begin to approach this standard. As discussed above, the Postal Service has not defined with any clarity the standards it will apply. It has not provided adequate detail about MERLIN processing. Its statements regarding the use of Family move matches are inconsistent at best and ignore valid obligations imposed upon some mailers. Headquarters and field personnel have given conflicting information regarding whether mailers can fully comply by using traditional *FASTforward* service. And the limited disclosure of applicable standards has been scattered in a disjointed and contradictory array of pronouncements at various locations—the Frequently Asked Questions section of Publication 363; the Move Update Mailer Advisement Policy; various unofficial PowerPoint presentations posted on the RIBBS website ([ribbs.usps.gov](http://ribbs.usps.gov))—that have turned official notice into a regulatory parody of hide-and-go-seek.

The Notice of Rate change does not begin to fill these gaps. The Notice leaves Mailers in no better position to know what circumstances trigger the new penalty than before the Postal Service's filing. The filing, therefore, is deficient as a matter of law. Any imposition of penalty liability based on the limited information provided by the Postal Service would violate the PAEA, basic tariff notice requirements, and fundamental norms of constitutional due process. The Commission should not allow the Move Update Assessment to go into effect until the Postal Service has implemented clearly defined standards for compliance, and published these standards in a single, readily accessible location.

**B. The Proposed Penalty Must Be Rejected Because the Postal Service Has Failed to Disclose Information Sufficient To Determine the Size of the Rate Increases the Penalty Would Produce And Whether The Resulting Increases Would Comply with the CPI-Based Price Cap.**

The PAEA limits rate increases for each class as a whole to an annual limitation based on the Consumer Price Index. 39 U.S.C. § 3622(d). The Postal Service does not seriously dispute that the penalties are effectively a rate increase on presort First-Class and Standard Mail.<sup>4</sup> Yet the Postal Service's filing blatantly fails to include the supporting technical information and justifications required by this Commission to demonstrate compliance with the price cap. Further, because the Postal Service imposes new, unavoidable penalties, it imposes an effective price increase on First-Class and Standard mail at a time when the current CPI permits no increases.<sup>5</sup>

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<sup>4</sup> By making its filing pursuant to section 3622 and Commission rule 3010, the Postal Service acknowledges the fact that its notice constitutes a rate adjustment subject to the price cap.

<sup>5</sup> Postal Regulatory Commission, 12-Month Average Change in CPI-U (October 15, 2009), [www.prc.gov](http://www.prc.gov). (the rolling 12-month average change in CPI-U reported in September, 2009 is -0.3%).

The Postal Service asserts that the cap compliance calculations are “not needed” in this docket because the assessment is not intended as a source of revenue, and that, for First-Class mail, the assessment is a “decrease” in the applicable postage. *Notice* at 6. But section 3622 does not distinguish between rate adjustments that are intended as a revenue source and rate adjustments intended to facilitate better addressed mail. A change in rates and classifications causes the average revenue per piece for a mail class to increase amounts to a rate change within the meaning of § 3622(d)—regardless of the ostensible purpose for the changes. And, the effect of the proposed penalties on First-Class Mail can be viewed as a “decrease” only in the most contrived theoretical sense. First-Class Mail is not currently subject to a seven-cent-per piece penalty at acceptance. Under the Postal Service proposal before the Commission in this docket, First-Class Mail will face such a penalty. That is a rate increase.

Furthermore, the incremental revenue calculations provided by the Postal Service are misleading. The Postal Service estimates (based on five months of test results) that 0.096% of the RPW volume over the coming 12 months would be subject to the assessment. Appendix B1. But its comparison to the “current” (before-rates) scenario is meaningless. The calculation of the “current” scenario that 0.231% of RPW volume would be assessed in the absence of this notice is unexplained, and does not appear to be based on any assessment that is currently imposed, nor even the assessment approach that was proposed last March. Without any plausible Postal Service explanation for the 0.231% figure, the most reasonable assumption for the “current” scenario is the percentage of First-Class Mail volume that currently pays MERLIN/PBV-based penalties at acceptance: 0%.

The Postal Service further obfuscates both any comparison of expected revenues to their earlier proposal, and any possible analysis of annual cap compliance, by using a different set of billing determinants from the R2009-2 proceeding. (The Postal Service uses RPW data from FY 2008Q4 -2009Q3, see Appendix. B3; in R2009-2 it applied FY2008 billing determinants.) While the Commission's rules specify the use of a rolling CPI, they do not require the use of rolling volume data to calculate expected revenues in an interim filing. The Postal Service's use of rolling volume data prevents mailers and the Commission from readily determining—even with the R2009-2 workpapers—whether Standard or First-Class rates would have exceeded the cap in the current year, had the Postal Service filed this penalty proposal last March. And because the Postal Service chose not to present the cap compliance calculation its workpapers, mailers and the Commission also cannot readily determine expected cap compliance (or not) using the volume and expected revenue data that the Postal Service did supply.<sup>6</sup>

As the proponent of the rate adjustment, the Postal Service bears the burden of establishing that the anticipated rate increase satisfies the CPI constraint. The Postal Service has failed to meet this burden. For the many reasons explained above, it is impossible to determine either the effective magnitude of the revenue impact, or whether the CPI constraint is satisfied. This failure of proof requires that the proposed rate and classification changes be disallowed.

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<sup>6</sup> We do not here address the fundamental question whether a mid-year, single purpose price adjustment should have the significant consequence of resetting the cap for postal prices as a whole, particularly under the current economic and financial circumstances of negative CPI and precipitously declining mail volumes. The Commission has expressed its intention to address that issue in a separate rulemaking. *Order No. 236* at 8, PRC Docket No. R2009-4 (July 1, 2009).

The Commission has previously warned the Postal Service of the need to file better supporting documentation.<sup>7</sup> As recently as September 16, it stated:

Moreover, the Commission has too frequently had to reiterate the need for Postal Service pricing proposals to be adequately supported and to adhere to accepted analytical principles. The Commission finds it necessary to underscore that future pricing adjustment filings must be fully supported and documented to enable the Commission to adequately assess their merits in timely fashion.

Where comments filed on the Postal Service's proposed adjustments are generally in support of the adjustment, allowing the Postal Service the opportunity to supplement its filing may be a reasonable course. Here, where the comment period will have passed before a more complete record can be developed, the only proper course of action is to reject the filing.

Accordingly, the Commission should reject the filing without prejudice to the resubmission a new, better-documented notice. For such a notice to be otherwise lawful, however, it would need to include not only workpapers that satisfy the Commission's rules (provided that such a proposal can be developed), but also the specific rules that establish the material terms and conditions of imposing any penalty (as addressed above). A new notice would also dictate another statutorily prescribed comment period so that mailers could review base their comments on supporting documentation that the Commission's rules require, and the Commission would have the benefit of informed discourse on the materials submitted.

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<sup>7</sup> *Order No. 299* at 2, PRC Docket No. R2009-5 (September 16, 2009).

**C. The Seven-Cent Penalty For “Bad” Addresses Above The 30% Threshold Is Unjust And Unreasonable.**

One of the central policies of the PAEA is the maintenance of just and reasonable rates on market-dominant products. 39 U.S.C. § 404 requires that rates be reasonable and equitable. Section 3622(b)(8) recodifies the objective of establishing and maintaining “a just and reasonable schedule for rates and classifications.” Section 3622(c)(5) requires consideration of “the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service.” And Section 3622(b)(2) recognizes the objective of predictability and stability of rates. The proposed seven-cent penalty violates each of these provisions. Although the Commission has not adjudicated the reasonableness of penalty or fallback rates under these provisions, the overwhelming weight of precedent under the cognate provisions of other regulatory statutes makes clear that a regulated monopoly may not impose a penalty or surcharge that bears no reasonable relationship to the costs created by the activity or condition that gives rise to the penalty or surcharge.

While regulated carriers are generally permitted to charge penalty fees as a method of ensuring compliance with rules and regulations, such fees must be just and reasonable and have a rational basis. Even an otherwise permissible penalty can become unjust and unreasonable if it diverges significantly from the costs incurred by the carrier as a result of noncompliance. *See Union Pac. R.R. Co. v. Bay Area Shippers Consolidating Ass’n, Inc.*, 594 F.2d 1291, 1294 (9th Cir. 1979) (expressing concern that penalty charges that more than tripled the applicable shipment rates could be excessive, especially when the railroad could not “suggest a rational relationship between the costs

that misdelivery of a manifest may impose on the carrier and the apparently severe consequences that it visits on the shipper”).<sup>8</sup>

In *Petition for Declaratory Order of Lehigh Valley R.R. Co.*, 353 I.C.C. 518 (1977), the Interstate Commerce Commission applied these standards to overturn a penalty scheme remarkably similar to the one proposed here. In that case, a consolidator sought to take advantage of a discounted rate offered by a railroad for certain shipments of mixed commodities. The discounted rate applied, however, only if every car in the shipment satisfied certain weight and commodity mix standards. In each of the consolidator's shipments, several individual cars did not meet these standards. The railroad responded by applying the non-discounted rate to the entire shipment. On petition for a declaratory order, the ICC ruled that the application of the non-discounted rate to cars that did meet the discount tariff requirements was unreasonable even if specified by the tariff. *Id.* at 527. Instead, the ICC held, the railroad should have charged the discounted rate on cars that met the requirements and the non-discounted rate only on those cars that did not. *Id.* In reaching this decision, the ICC relied on the cost characteristics of the shipments—while it was appropriate to apply the higher rate to non-

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<sup>8</sup> See also *Order Instituting Rulemaking to Implement Portions of AB 117 Concerning Community Choice Aggregation*, 2004 Cal. PUC LEXIS 609, 50-51 (Cal. PUC 2004) (holding that imbalance penalties imposed by a utility “should include fees that bear a reasonable relationship to the costs the utilities will incur as a result” of the customer’s conduct); *In the Matter of Generic Docket to Address Performance Measurements and Enforcement Mechanisms*, 2002 N.C. PUC LEXIS 523, 127-29 (N.C. PUC 2002) (rejecting a proposed penalty on the grounds that it was not “directly tied to the economic significance of the noncompliance”); *In the Matter of Tariff Revision, Designated as TA3-487*, 201 Alas. PUC LEXIS101, 4-5 (Reg. Comm’n. Alas. 2001) (holding a premature cancellation penalty excessive and not just and reasonable and limiting the penalty to the savings the customer achieved by entering the long term contract); *Petition of Dairylea Cooperative Inc. to Establish an Open Access Pilot Program for Farm and Food Processor Electricity Customers*, 1997 N.Y. PUC LEXIS 497, 8-12 (N.Y. PSC 1997) (rejecting a proposed penalty that was “far in excess of . . . costs” in favor of one that more closely tracked the costs caused by noncompliance).

qualifying cars because they differed from qualifying cars in essential aspects, there was no basis for applying the higher rate to cars that had exactly the weight and mixture characteristics contemplated by the discount rate tariff. *Id.* at 526. The Commission explained its decision as follows:

“[P]etitioner seeks to collect undercharges which penalize cars loaded in full compliance with the mixture rule in the same manner as cars loaded in violation of the rule. The severity of that penalty is reflected in the fact that the average charge applied to a carload complying with the rule is more than double the amount the charge on that identical carload would have been had it been shipped with another carload containing a like mix of traffic. While we recognize a theoretical operational distinction between multicar movements of mixed freight under item 13555 and multicar movements under item 135, we are convinced that such a wide spread cannot be justified on the basis of a difference in character of the mixed freight in some other car in the same shipment. Since no other justification has been offered, we are of the view that exaction of the applicable charges would be unjust and unreasonable as to cars which meet the item 13555 mixture requirements.”

*Id.* at 526.

There is no question that the Postal Service's proposal involves a penalty rate. PostCom, DMA and ANM do not object in principle to such a penalty, which is not uncommon in utility law, as *Lehigh* itself illustrates. Moreover, we recognize that penalty rates are to be viewed in a different light than other product offerings of the Postal Service. This is because penalty rates serve to deter uneconomic conduct by mailers as well as to compensate the Postal Service for the costs inflicted on it by such conduct when it occurs. But the Postal Service has failed to justify the seven cent penalty on either ground.

(1) The goal of deterrence does not justify setting a penalty rate higher than necessary to deter the conduct that one seeks to forestall. The Postal Service has made no

attempt to show a penalty of seven cents meets that sort of just and reasonable standard. Nor would such a claim be plausible. The Postal Service claims that only 0.096% of Standard Mail volume is likely to be out of compliance. As we have shown, that estimation is seriously open to doubt. Whether the figure is accurate or not, however, it hardly establishes a need for additional deterrence.

Moreover, the Postal Service has *not* proposed to eliminate use of its existing post-acceptance tools for deterring Move Update violations. These enforcement tools include audits and investigations by the Postal Inspection Service, revenue deficiency assessments, and claims for multiple damages (up to three times the amount of the revenue deficiency) and civil penalties (up to \$11,000 per mailing statement) under the False Claims Act. The Postal Service has made clear that it intends to continue using these enforcement tools—even for mailings that pass the *MERLIN/PBV* test:

This assessment approach is not designed to permit customers to substitute payment of the Move Update Assessment Charge for the implementation of appropriate processes that meet the requirements of the Move Update standard.<sup>9</sup>

The Postal Service reserves the right to use audits or other procedures to verify that any mailing entered at the presorted rates actually complied with the Move Update standard. Additional postage may be assessed if the results of the audit or other procedure indicate that the mailing was not qualified for the discounted prices.<sup>10</sup>

(2) The Postal Service has failed to justify the proposed penalty as a mechanism for compensating the Postal Service and mailers who do comply with Move Update from the harm that they suffer from noncompliance by other mailers. Although

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<sup>9</sup> *New Move Update Assessment Procedures for January 2010 for Automation and Presort First-Class Mail and All Standard Mail Items*, 74 Fed. Reg. 55140 (Oct. 27, 2009).

<sup>10</sup> *Move Update Mailer Advisement Policy* (August 2009) at 3.

penalty rates—and indeed postal rates generally—are not subject to cost of service regulation under the PAEA, a rough measure of the harm—and therefore of a reasonable rate—is the cost the Postal Service incurs per piece from non-compliance by mailers with Move Update.

The Postal Service’s current Notice of Price Adjustment and supporting workpapers do not claim that the amount of the per-piece charge has any relationship to the harm suffered by the Postal Service from noncompliance with Move Update requirements by Standard Mail, and no relationship appears to exist. For letters weighing less than 3.3 ounces, a penalty of seven cents still amounts to a rate increase of at least 27 percent over the otherwise applicable Standard Mail rate per assessed piece. The Postal Service has offered no evidence that need to dispose of undeliverable-as-addressed (“UAA”) pieces of Standard Mail harms the Postal Service by an amount equal to either seven cents per piece or 27 percent of the otherwise applicable postage. *See* Appendix B3, LFP Revenue@New Prices.xls (showing anticipated revenue from seven-cent surcharge, but not costs of noncompliance with Move Update).

Nor does the present record allow the Commission or other parties to develop an independent comparison between the proposed MERLIN/PBV penalties and the harm to the Postal Service and its customers from Move Update violations. Because many significant gaps remain in the standards and procedures for determining liability for the MERLIN/PBV penalties, and because the MERLIN/PBV database is inconsistent with the Postal Service’s other Move Update databases, it is impossible for anyone to know whether any rational relationship can be drawn between the seven cent penalty and the

harm suffered by the Postal Service and Move Update-compliant customers from mailpieces that will assessed penalties through the MERLIN/PBV assessment procedure.

Furthermore, the Postal Service has reserved the right to reevaluate the threshold, and has indicated that it intends to tighten the compliance limits over time. *Notice* at 4. Further tightening of the threshold is likely to increase further the compliance costs of avoiding the seven-cent penalty, and attenuate even further the nexus between the penalty and the costs avoided by the Postal Service.

The logic of *Lehigh Valley*, *supra*, applies with particular force here. The seven-cent surcharge proposed by the Postal Service should apply only to the portion of the mailing actually determined to have stale addresses, and not, as the Notice proposes, the percentage of pieces that an arbitrary database lookup suggests should have been changed. Only addresses that are actually stale have the potential to require costly manual disposition as a result of their staleness.

Thus, if sampling indicates that five percent of the pieces in mailing have stale addresses, the seven cent surcharge should be imposed only on those pieces. This approach better aligns the penalty with costs while still providing an effective deterrent to the submission of non-compliant mailings. As the ICC reasoned in *Lehigh Valley*, “[u]se of the rates determined in the above manner is believed justified in the particular situation because, while recognizing the need for more than a token penalty to discourage repetitive tariff violations it limits the penalty to the particular traffic that actually produces the violation.” *Id.* at 526.

The *Lehigh Valley* analysis applies particularly to Standard Mail. The Postal Service's justification for the seven cent penalty in Standard Mail is that, but for the rate proposal, the "default rate" would be the Single piece First Class Mail rate. But an unlawfully high rate may not be justified on the ground that the alternative rate would have been even higher.<sup>11</sup>

A series of Court of Appeals decisions arising from a pricing standard used by the Interstate Commerce Commission to set certain market dominant rates in 1979-80 is also on point. Recognizing that variations in competition and demand required that railroads be permitted to set some rates on market-dominant services above fully distributed costs ("fully allocated costs" in railroad parlance) to recover total fixed and common costs (roughly equivalent to postal institutional costs) for the system as a whole, the ICC prescribed a "just and reasonable" maximum rate ceiling on individual rates equal to 107 percent of fully allocated costs.<sup>12</sup> The "seven percent solution," assailed by railroads and shippers alike as arbitrary, was overturned by every court that reviewed the standard.<sup>13</sup>

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<sup>11</sup> Likewise, the seven cent penalty on Standard Mail may not be justified on the grounds that the First-Class rate structure has a surcharge of similar magnitude for noncompliance with Move Update. Undeliverable First-Class Mail is generally entitled to forwarding or return to the sender. Standard Mail is generally not entitled to these costly and labor-intensive services without payment of additional postage.

<sup>12</sup> *Increased Rates on Coal, L&N R.R., October 31, 1978*, 362 I.C.C. 370 (1980); *Increased Rates on Coal, Colstrip and Kuehn, MT to Minnesota*, 362 I.C.C. 30 (1979); *Unit Train Rates on Coal—Burlington Northern, Inc.*, 361 I.C.C. 655 (1979); *Arkansas Power & Light Co. v. Burlington Northern Inc.*, 361 I.C.C. 504 (1979); *Annual Volume Rates on Coal—Wyoming to Flint Creek, Arkansas*, 361 I.C.C. 533 (1979).

<sup>13</sup> *System Fuels, Inc. v. United States*, 642 F.2d 112 (5th Cir. 1981); *Union Pacific R.R. Co. v. United States*, 637 F.2d 764, 768-69 (10th Cir. 1981); *Iowa Public Service Co. v. ICC*, 643 F.2d 542 (8th Cir. 1981); *San Antonio, Texas v. United States*, 631 F.2d 831 (D.C. Cir. 1980).

*San Antonio, Texas v. United States*, 631 F.2d 831, 852 (D.C. Cir. 1980), explained the issue clearly. While recognizing that “differential pricing” (i.e., setting rates with varying coverage ratios)

may be a legitimate criterion for the ICC to consider . . . the Commission still must provide adequate justification for its choice of a particular increment above fully allocated costs. In [its decision], however, the ICC did no more than make the general assertion that it could not find that the railroads had achieved revenue adequacy. There is nothing in the record in the way of findings, evidence, or rationale to support the seven percent solution or any percentage solution. The Commission's general allusion to the need to consider the revenue requirements of the carriers and the economics of differential pricing is so broad as to be meaningless as a standard this rationale could be put forth just as readily in an attempt to justify a 1%, 21%, 45%, or even a 99% additive.

The seven cent penalty proposed here is just as arbitrary as the seven percent solution struck down by the Courts of Appeals in 1980-81.

**IV. THE RIGHT RESERVED BY THE POSTAL SERVICE TO CHANGE MANY OF THE RULES IN THE FUTURE IS AN ILLEGAL DELEGATION OF COMMISSION REGULATORY AUTHORITY TO THE POSTAL SERVICE.**

Rather than establishing definite standards for the assessment of Move Update penalties, the Postal Service's MCS language simply indicates that the charge will be “\$0.07 per assessed piece, *as specified by the Postal Service*.”<sup>14</sup> With respect to Standard Mail, this language represents a change from the Postal Service's February rate filing,

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<sup>14</sup> *Notice*, Appendix A, at 2 (§ 1105.5, First Class Single Piece Letters/Postcards) (emphasis added). The same language in every definition of the Move Update penalty in the proposed MCS language. *See Notice*, Appendix A, at §§ 1110.5 (First Class Presorted Letters/Postcards); 1115.5 (First Class Flats); 1120.5 (First Class Parcels); 1205.5 (Standard Mail High Density and Saturation Letters); 1210.5 (Standard Mail High Density and Saturation Flats/Parcels); 1215.5 (Standard Mail Carrier Route); 1220.5 (Standard Mail Letters); 1225.5 (Standard Mail Flats); 1230.5 (Standard Mail Not Flat Machinables (NFM)s/Parcels).

which read “\$0.07 per piece in a mailing that does not comply with the Move Update standards.” While limiting the charge to “assessed” pieces represents an improvement over applying the charge to the entire mailing, the phrase “as specified by the Postal Service” eliminates any reference to identifiable standards for noncompliance.

There are circumstances in which a limited delegation to the Postal Service of authority to fill in the interstices or specify the technical details of classification rules in the MCS is both necessary and proper. This is not one of them. The Postal Service has provided no insight into what standards it will apply in “specifying” the assessment of the charge. The Postal Service thus has reserved to itself the authority to modify unilaterally the standards it will apply to assess this charge in the future. The Postal Service has already indicated it will do so with respect to the 30% tolerance, which it intends to reduce “as necessary to ensure that address quality improves.” *Notice* at 4. While the Postal Service does indicate that it will provide “proper public notice” before changing this tolerance, it does not indicate that it will submit such changes to the Commission for review and approval. *Id.*

Allowing the Postal Service to retain this much discretion would abdicate the Commission’s oversight authority over rate and classification changes. Although the Postal Service has been coy about the changes it will make pursuant to this reserved authority, it is apparent that such changes could have significant effects on the net effect of the Move Update Assessment charge for mailers. Lowering the tolerance level, for instance, would drastically increase the number of mailers that fail to meet the PBV standards and thus must pay the Move Update Assessment Charge. Such a change would

be tantamount to a rate and classification change in its own right, and must be subject to Commission review.

The PAEA requires rate changes to be filed with the Commission. 39 U.S.C. § 3622(d). The Commission's rules restate this requirement. 39 C.F.R. § 3010.10. In fact, the Commission urges the Postal Service to file its proposed changes greater than the 45-days in advance required by the PAEA "where the intended price changes include classification changes or operations changes likely to have material impact on mailers." 39 C.F.R. § 3010.10(b). A reduction in the tolerance level, in particular, is a change that would have "material impact on mailers." It would increase the number of mailers subject to the charge, potentially affect mailings already in development, and force mailers to alter the procedures relied on to ensure compliance with Move Update standards. Such major changes should not be allowed to take effect at the sole discretion of the Postal Service. To allow these changes to take effect according to the whims of the Postal Service would be an illegal delegation of the Commission's authority over rates.<sup>15</sup>

By way of analogy, agencies operating under statutes similar to the PAEA have often rejected attempts by carriers to claim authority to modify the terms and conditions of service without regulatory approval. In *Northern Natural Gas*, *supra*, the FERC was concerned that the failure to specify certain conditions in the filed pro forma tariff could "lead to the inclusion of impermissible terms and conditions of service." 102 F.E.R.C. at 61,457. Thus, the FERC ordered Northern Natural to change its tariff to clearly identify

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<sup>15</sup> Cf. *Great Northern Pacific & Burlington Lines, Inc.*, 338 I.C.C. 782, 785 (1972) ("It should be apparent that we could not have granted authority to rail carriers to enter into new trackage rights arrangements in a manner which would cause us to abdicate our responsibility to make the requisite findings of fact and the legal conclusion that the arrangements are consistent with the public interest.")

the provisions shippers could use to fill in the blank portions of the pro forma tariff. Similarly, in *Texas Gas Transmission, LLC*, the FERC found that a “provision in Texas Gas’s proposed *pro forma* service agreements allowing the insertion of additional exhibits containing undefined ‘contractual terms’ lacks the specificity required by Commission policy.” 127 F.E.R.C. ¶ 61,313 at 62,572 (2009). The FERC explained that allowing Texas Gas the discretion to craft as yet undefined provisions to include in its customer contracts “inhibits customers from easily tracking and understanding all of the terms that may be inserted into the service agreements. Such lack of clarity poses a substantial inconvenience to pipeline customers, creates confusion, and increases the risk of undue discrimination.” *Id.* Additionally, FERC expressed concern that if the additional terms were not defined and filed with FERC, it would “lack[] the ability to ensure that those contractual terms would be just and reasonable and not unduly discriminatory.” *Id.*

These decisions, and others like them, are based on the requirements of Section 4 of the Natural Gas Act, which requires carriers to file “schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the [FERC], and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.” 15 U.S.C. § 717c(c). In implementing this provision, the FERC has allowed natural gas carriers to file a pro forma agreement and exempted any contracts that conform to the pro forma tariff from a separate filing requirement. If, however, a carrier enters into a contract that “deviates in any material aspect” from the filed pro forma agreement, the nonconforming agreement must be filed with the FERC. 18 C.F.R. § 154.1(d). This provision prevents carriers from changing the terms under which a given rate is available without filing those new terms with the FERC. Notably, the FERC

has defined a material deviation as one that “(1) goes beyond filling in blank spaces with the appropriate information allowed by the [pro forma] tariff and (2) *affects the substantive rights of the parties.*” *Columbia Gas Transmission Corp.*, 97 F.E.R.C. ¶ 61,221 at 62,002 (2001) (emphasis added).

These principles apply with equal force to rate and classification filings by the Postal Service. These regulations ensure that any material changes to the filed pro forma tariff—here, the MCS—are just, reasonable, and nondiscriminatory. The PAEA and the Commission’s rules similarly require the Postal Service to file its rates with the Commission to ensure that such rates are just, reasonable, and nondiscriminatory. If the Postal Service could materially alter those rates by taking actions such as reducing the tolerance level—in effect imposing a new rate on a substantial number of mailers—without filing that change with the Commission, then the Commission could not longer ensure that the rates remain just, reasonable, and nondiscriminatory. Delegating such authority to the Postal Service would subvert the oversight authority that the PAEA grants this Commission.

## CONCLUSION

For the foregoing reasons the Commission should without prejudice reject the Postal Service's notice as unsupported. Furthermore, it should require the Postal Service to define, to this Commission's satisfaction, clearly defined standards that articulate both its Move Update requirements, and the rules the Postal Service intends to apply in the Move Update verification process.

Respectfully submitted,

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